

03/03/05 17:49 FAX 802 864 4906

Downs Rachlin & Martin

RECEIVED  
CENTRAL FAX CENTER

MAR 03 2005



OFFICIAL

## FAX TRANSMITTAL MEMO

<b>TO:</b> <b>Commissioner for Patents</b>	<b>COMPANY:</b> <b>U.S. Patent &amp; Trademark Office</b>	<b>FAX #:</b> <b>703-872-9306</b>
<p>This communication may contain confidential and/or privileged information intended only for the addressee. DO NOT read, copy or disseminate this communication unless you are the intended addressee. If you have received this communication in error, please contact the sender immediately and discard all copies.</p>		
<b>DATE:</b> <b>FROM:</b> <b>OPERATOR:</b> <b>CLIENT/MATTER:</b> <b>PAGES:</b>	<b>March 3, 2005</b> Morgan S. Heller II Karen Jeffer 08814-00002 5 (including cover)	Reviewed and approved for facsimile transmission by: <i>MSH</i>

*The original will not be sent. If the copy is illegible or incomplete, please call the operator at Direct: (802) 846-8318.*

### Comments

BTW.255986.1

COURTHOUSE PLAZA ■ 199 MAIN STREET ■ PO BOX 190 ■ BURLINGTON, VT ■ 05402-0190 ■ T: +1.802.863.2375 ■ F: +1.802.862.7512  
BURLINGTON, VT ■ ST. JOHNSBURY, VT ■ BRATTLEBORO, VT ■ MONTPELIER, VT ■ LITTLETON, NH ■ WWW.DRM.COM

RECEIVED  
CENTRAL FAX CENTER

802

MAR 03 2005

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Peter E. Raber

Serial No.: 10/728,278

Filed: December 4, 2003

Title: Variable Focus System

Attorney Docket No.: 08814-00002

Group Art Unit: 2873

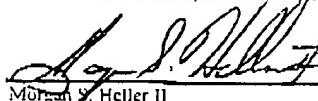
Examiner: Ricky Leverne Mack

Commissioner for Patents  
Alexandria, VA 22313-1450

March 3, 2005

 CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 703-872-9306, on the date shown below.


3/03/05  
 Morgan S. Heller II  
 Date

## RESPONSE TRANSMITTAL

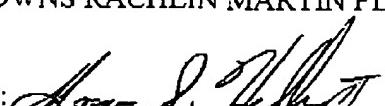
Transmitted herewith for filing is a Response to Election/Restriction mailed February 3, 2005.

- No additional fee is required.
- The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 04-1588.
- Any additional filing fees required under 37 C.F.R. §1.16.
- Any patent application processing fees under 37 C.F.R. §1.17.

Respectfully submitted,

DOWNS RACHLIN MARTIN PLLC

By:

  
 Morgan S. Heller II  
 Registration No.: 44,756  
 Tel: (802) 863-2375  
 Attorneys of Record

P277-12/00

Page 1 of 1

 Law Offices of  
**Downs Rachlin Martin PLLC**  
 199 Main Street  
 P.O. Box 190  
 Burlington, VT 05402-0190  
 (802) 863-2375

MAR 03 2005

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Peter E. Raber

Serial No.: 10/728,278

Filed: December 4, 2003

Title: Variable Focus System

Attorney Docket No.: 08814-00002

Group Art Unit: 2873

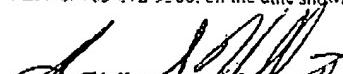
Examiner: Ricky Leverne Mack

Commissioner for Patents  
Alexandria, VA 22313-1450

March 3, 2005

 CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. 703-372-9306, on the date shown below.

  
Morgan S. Heller II3/03/05  
Date

## Response to Election/Restriction

Telephone Call with the Examiner

On February 23, 2005, Applicant's undersigned attorney spoke with the Examiner to clarify the unclear species election requirement, which does not identify different species of the same invention, and do not correlate in any apparent way to the invention election requirement. During the call, the Examiner indicated that Applicant should identify a species that will effectively focus the Examiner's search. The Examiner stated that he is willing to work with the Applicant on the species election issue.

Election

In response to the election/restriction requirement in the Office Action dated February 3, 2005, Applicant elects, with traverse, for immediate prosecution the invention of Group III and the species of FIG. 5A of the present application. FIG. 5A generally shows an electrovariable optic of the present invention comprising a curved array of movable optical elements. Although

Page 1 of 3

Law Offices of  
**Downs Rachlin Martin PLLC**  
 199 Main Street, P.O. Box 190  
 Burlington, VT 05402-0190  
 (802) 863-2375

the optical elements may be attached to either a planar or non-planar support structure and each optic element may be any of a number of optical types, e.g., reflective, refractive, etc., Applicant elects the subspecies that includes a planar support structure and primarily reflective optical elements. Claims 18-20, 22-26, 30, 42-48, 52-58 and 62 read on the elected invention, species and sub-species.

### Traversal

#### *No Additional Search Burden for Searching Groups I and IV along with Group III*

In the Office Action, the Examiner has identified four distinct inventions and has indicated that each is distinct from the others by virtue of each having acquired separate status in the art as shown by their different classifications. However, Applicant notes that all of the inventions have substantially overlapping classifications. Indeed, if Applicant elects the invention of Group III, which Applicant has, then two of the three remaining inventions, i.e., the inventions of Groups I and IV, can be readily searched at the same time as the invention of Group III because their classifications are merely subsets of the classifications of Group III. Therefore, Applicant asserts that the Examiner should not be unduly burdened to conduct a search for the three inventions of Groups I, III and IV because the Examiner will be searching the same classes and subclasses the Examiner would have to search for the invention of Group III alone.

More particularly, the Examiner has identified: the invention of Group III as being classified in Class 359, Subclasses 245, 619, 626 and 627; the invention of Group I as being classified in Class 359, Subclasses 245, 626 and 627 (all of which must be searched for Group III); and the invention of Group IV as being classified in Class 359, Subclasses 245, 619 and 626 (all of which must also be searched for Group III). Since a search for Group III will automatically result in the searches for Groups I and IV, Applicant asserts that there is no significant additional burden on the Examiner for searching all three groups at the same time. In this connection, it is noted that Group II includes Subclass 458, which is the only subclass that does not appear in Groups I, III and IV.

In view of the foregoing, Applicant respectfully submits that the election of the species of FIG. 5A and the two subspecies identified above should be considered relative to Groups I, III and IV, not just Group III. Consequently, Applicant respectfully asserts that the proper set of claims for immediate prosecution on the merits consists of claims 1, 2, 5, 7-10, 18-20, 22-26, 30, 42-48, 52-58, 62 and 68-81.

*Many Claims are Generic*

In the present Office Action, the Examiner indicated that no claims are generic to the various species that the Examiner has identified. Applicant respectfully disagrees. Aside from the fact that what the Examiner has identified in the Office Action as species are, in fact, not species relative to any identified genus, many of the elected claims are indeed generic to various species disclosed in the present application. Applicant refers the Examiner to the list of claims in the Election section above, wherein many of the claims are generic to not only the species of, e.g., FIGS. 3, 5A, 7 and 18, but also the species of 10, 12 and 13, among other species.

*Missing Claims*

Applicant notes that the Examiner did not address claims 79-81 in the present Office Action. Consequently, Applicant is uncertain how the Examiner regards these claims. However, Applicant believes that these claims are sufficiently related to the method claims of Group I, that claims 79-81 should be included in Group I.

Respectfully submitted,

DOWNS RACHLIN MARTIN PLLC

By:

  
 Morgan S. Heller II  
 Registration No.: 44,756  
 Tel: (802) 863-2375  
 Attorneys of Record

BTV.430903.1

Page 3 of 3

Law Offices of  
**Downs Rachlin Martin PLLC**  
 199 Main Street, P.O. Box 190  
 Burlington, VT 05402-0190  
 (802) 863-2375